IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AFSCME/IOWA COUNCIL 61, Petitioner, vs. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent.	)	CASE NUMBER AA 1830 and 1831
IN THE MATTER OF. STATE OF IOWA, Petitioner, vs. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent.	)	RULINGS ON PETITIONS FOR JUDICIAL REVIEW 5/28/92

The Court has before it the Petitions for Judicial Review in each of the above consolidated matters. The matter came on for hearing before the Court on March 6, 1992. AFSCME appeared by its counsel, Mr. Michael E. Hansen. The State appeared by attorney Kristin H. Johnson of the Iowa Department of Personnel. The Public Employment Relations Board (PERB) was represented by attorney Susan M Bolte. The Court has had an opportunity to consider the plenary briefs submitted by the parties, and the administrative record, and now rules as follows on the issues presented.

The State and AFSCME were parties to a two-year collective bargaining agreement which expired June 30, 1991. The present dispute concerns whether various proposals submitted by AFSCME are mandatory or permissive subjects of bargaining. See Section 20.9, Iowa Code. On June 21, 1991, PERB filed a "Reissued Ruling Negotiability Dispute." This ruling is the agency action at issue in the pending administrative appeals. The State and AFSCME were each disappointed by PERB's determinations with respect to certain of the proposals. The State seeks review of PERB's determinations with respect to Proposals 7, 9, 11, 16, and 17. AFSCME seeks review of the determinations with respect to Proposals 2, 10, 12, 13, 16, and 17. No issues of fact are involved. The question is whether each of the disputed proposals is mandatory or permissive.

The Court gives weight to PERB's construction of Chapter 20, but because a legal question is involved, is not bound by PERB's determinations of law. Aplington Community School Dist. v. Iowa PERB, 392 N.W.2d 495, 498 (Iowa 1986). The determination of whether a proposal is permissive or mandatory is an important one, because if mandatory, the public employer and union must meet to negotiate the proposal, and impasse and arbitration procedures are available to settle disagreements concerning them. See

Northeast Community School Dist. v. PERB, 408 N.W.2d 46, 47 (Iowa 1987); Saydel Education Assn. v. PERB, 333 N.W.2d 486, 487 (Iowa 1983). In interpreting Section 20.9 the Iowa Supreme Court has "adopted a restrictive and narrow approach . . . when considering whether a specific disputed issue is subject to mandatory bargaining." City of Dubuque v. PERB, 444 N.W.2d 495, 497 (Iowa 1989). See City of Fort Dodge v. PERB, 275 N.W.2d 393, 398 (Iowa 1979); Charles City Community School Dist. v. PERB, 275 N.W.2d 766, 772-73 (Iowa 1979). A two-part analysis is applied under the statute. First, it must be determined if the disputed proposal is within the meaning of one of the mandatory bargaining subjects described in Section 20.9 and, second, whether there is a legal prohibition against bargaining on the particular subject. Woodbine Community School Dist. v. PERB, 316 N.W.2d 862, 864 (Iowa 1982). In determining these issues, the Court looks only to the subject matter of the proposal, not its merit. Id.

As noted, mandatory subjects of bargaining are defined in Section 20.9. As pertinent here it provides:

> The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to *wages, hours, vacations, insurance, holidays,* leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, *health and safety matters,*

evaluation procedures, procedures for staff reduction, in-service training, and other matters mutually agreed upon.

With the statute and the foregoing principles governing its application in mind, it is necessary to examine the specific proposals in question.

I. AFSCME's APPEAL (AA-1830)

Proposals 2 and 10.

Proposal 2 provides:

> Appendix H Department of Corrections
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> 4. Article XII, Training Committee. The union and the employer agree to establish committees at adult corrections institutions in the Department of Corrections for the purpose of discussing and formulating recommendations related to training as it regards health and safety. Such committees shall be comprised of three (3) members to be designated by the employer and three (3) employees to be designated by the union.
>
> Such committees shall meet on a quarterly basis following labor-management meetings, when possible, and written recommendations shall be submitted to the warden or superintendent of the institution on a quarterly basis. Copies of the recommendations shall be forwarded to the Director of the Department of Corrections.
>
> Employees shall be in pay status when the above referenced meetings are held during the employee's regularly scheduled hours of employment. The Employer is not responsible for any travel expense or other expenses

incurred by employees for the purpose of complying with the provision of this Section.

Proposal 10, in turn, states:

Article X Leaves of Absence, Section 4

E. Delegates to Joint Labor/Management Committees

The Local Union President/Chapter Chair or his/her designee shall be granted time off, with pay, to attend regular meetings or conferences of joint Labor/ Management committees such as LEECALM and QCALM. Such leaves shall not exceed eight (8) hours per month.

AFSCME argues Proposal 2 is a mandatory subject of bargaining because the proposed labor/management committee relates to "health and safety matters," and that Proposal 10 is mandatory because it relates to "leaves of absence." As PERB noted in the Reissued Ruling, the Board has held labor/management committees are a mandatory subject of bargaining if the substantive purpose of the committee is limited to the study or investigation of a mandatory topic of bargaining. Ruling at 6. With respect to whether a "health and safety" proposal is mandatory, PERB has taken the position the proposal must bear a direct relationship to health and safety of employees "as a means of protecting employees beyond the normal hazards inherent in their work, so long as there is not a substantial interference with the

duties and obligations of public officials to set the basic policies by which government accomplishes its mission and the methods by which those policies are implemented." City of Iowa City, 82 PERB 1892. Applying this narrow view of the subject area, PERB concluded Proposal 2 was too broad because it would encompass "training related to all health and safety issues, and not just those which fall within the narrow statutory definition." Ruling at 8. Also, the level of training and education required of employees in general falls within the employer's prerogative under Section 20.7, Iowa Code to determine employee qualifications. Finally, with respect to the third paragraph providing employees in attendance at such meetings would be in a pay status when the meetings were held during regularly scheduled work hours, PERB noted such subjects appear to be permissive under existing case law. Charles City Community School Dist. v. PERB, 275 N.W.2d 766, 775 (Iowa 1979).

The mere fact a contract proposal concerns health and safety in general is not sufficient to make it a mandatory subject of bargaining. See Clinton Police Dept. v. PERB, 397 N.W.2d 764, 767 (Iowa 1986). In assessing a proposal such as that tendered by AFSCME here, the question is whether the predominant characteristic of the proposal is one of health and safety "as

a means of protecting employees beyond the normal hazards inherent in their work." Id. Proposal 2 is, as the Board concluded, overbroad because it would include training relating to both the normal and abnormal hazards of employment for adult corrections employees. Thus, it cannot be said the predominant characteristic of the proposal relates to those health and safety concerns which are a mandatory subject of bargaining. In view of the narrow construction to be given to Section 20.9, the Court concurs with PERB's assessment that the overbreadth of the proposal renders it permissive.

With respect to Proposal 10, though styled as a leave of absence provision, the proposal principally deals with the identity of who will represent AFSCME at certain labor/management committees, and their pay status while doing so. Such matters are permissive subjects of bargaining. Charles City Community School Dist., supra, 275 N.W.2d at 775. Accordingly, PERB's determination concerning Proposal 10 is also correct.

Proposals 12 and 13.

Proposal 12 provides:

> Appendix I Department of Transportation
>
> 2. The Department of Transportation and the Union shall discuss at labor/management meetings the scheduling of motor vehicle officers to work the midnight shift of the rotation system.

Proposal 13 provides:

> Appendix Q Professional Fiscal and Staff Unit
>
> 2. Problems in work schedules for Field Staff employees in the Department of Inspections and Appeals shall be a topic of discussion pursuant to the labor/management committee process.

The problem with Proposals 12 and 13 is not with the subject matter. As PERB noted, both deal with the mandatory topic of employee work schedules. Ruling at 23. Rather, the problem is that the proposals are contained in appendices to the contract and neither establish joint labor/management committees to discuss the work schedule issues referred to, nor relate to any labor/management committee in any other proposal organized to discuss mandatory topics. As noted previously, a joint labor/management committee is a mandatory subject of bargaining if the purpose of the committee is restricted to the study or investigation of a mandatory topic. Proposals 12 and 13, however, do not propose to establish such a committee. Viewing the proposals on their face, as it is required to do, PERB concluded they were permissive. The Court agrees and rejects the argument PERB acted arbitrarily in this regard. It is not PERB's function to refashion proposals and do what the proponent might have meant. The proposals do not purport to establish appropriately limited labor/management committees to study work schedules, but rather

stand alone in proposed appendices untethered to any particular committee. In these circumstances the Court agrees the proposals are permissive.

Proposals 16 and 17.

Proposal 16 provides:

> III. Merit System and Job Classification
>
> Article IX Wages and Fringe Benefits, Section 1
>
> E. Two committees, one composed of four Union representatives of Regents employees appointed by the President of AFSCME/Iowa Council 61 and four representatives of the Employer appointed by the Director of the Iowa Department of Personnel, and the other committee composed of six Union representatives of General Government employees appointed by the President of AFSCME/Iowa Council 61 and six representatives of the Employer appointed by the Director of the Iowa Department of Personnel shall be formed to study and make recommendation regarding the wage pay grades of job classifications within the bargaining units.
>
> The committees shall study classifications submitted by any committee member and shall evaluate the skills, effort, working conditions, education required and other relevant information regarding the job.
>
> Prior to September 1, 1991 the committees shall meet and develop procedures by which to conduct the study. The procedures shall contain the following items:
>
> 1. The collection of job classification information to include completion of position description questionnaires for each job classification that is studied.

2. The evaluation of classifications, based on the questionnaire and all other acquired information.

3. The hearing of appeals from employees for the review of their classification.

4. Any other criteria mutually agreed upon by the parties.

Such reviews shall be completed by September 1, 1992. Committee recommendations shall be forwarded to the Director of the Iowa Department of Personnel and the President of AFSCME/Iowa Council 61 for revisions/ approval. If no agreement is reached by the committee as to a pay grade change, the change shall not be made. Pay grade changes shall be ratified by the Union and shall become effective July 1, 1993.

Job classifications not ratified by the parties may be negotiated or taken to interest arbitration for the July 1, 1993 Agreement.

Union members shall serve on these committees without loss of pay.

Proposal 17 provides:

Appendix A Pay Grades and Classifications

The Employer will review trades job classifications to determine whether it agrees that additional jobs should have advanced starting rates and/or if certain advanced starting rates should be adjusted. Should either party disagree, the disagreements may be taken to the pay grade committee.

Both PERB and the State recognize Porposal 16 deals with job classifications, a mandatory subject of bargaining under Section 20.9. Ruling at 29; State's Brief at 15. PERB, however,

held the entirety of Proposal 16, and related Proposal 17, to be permissive "because the proposals require future bargaining and ratification of committee recommendations during the term of the parties' two-year collective bargaining agreement." Ruling at 29. This ran afoul of PERB case law which holds Section 20.9 does not contemplate bargaining during an existing labor contract. Estherville Community School Dist., 84 PERB 2658. PERB's ruling did not state why the first two paragraphs of Proposal 16, which merely contemplate labor/management committees "to study and make recommendation" concerning job classifications under stated criteria, were held permissive along with the rest of the proposal setting forth the offending future bargaining and ratification procedure. In its brief on the administrative appeal, however, PERB asserts the offending procedures dealing with implementation of the committee recommendations were part of an "overall committee 'scheme'" which made it impossible and impractical to break the proposal language down into component parts for the purposes of determining negotiability status. PERB Brief at 17. As the record in this case indicates with respect to other proposals, evidently PERB does make different negotiability determinations with regard to parts of a single proposal if severable.

The Court respectfully disagrees with PERB's conclusion concerning the severability of Proposal 16 in this regard. The proposal contains two distinct elements, establishment of labor/management committees to study and make recommendation concerning job classifications, and procedures governing the review, appeal, and resolution of conflicts concerning job classifications. On their face these two parts may be readily separated for the purpose of determining negotiability. The predominant purpose of the proposal is to set up labor/management committees to study and make recommendation concerning a mandatory topic of bargaining. If limited to this purpose, the proposal is mandatory under existing PERB authority. Andrew Community School District., 84 PERB 2629. See also Ruling at 29. The procedural aspects of the proposal should not control the negotiability determination with respect to the appropriate substantive elements. Because PERB treats a mandatory portion of the proposal as permissive, it is to this extent affected by error of law. Section 17A.19(8)(e), Iowa Code. Accordingly, PERB's ruling will be modified to provide the first two paragraphs of Proposal 16 are mandatory, but the remainder is permissive.

Proposal 17 relates to the permissive procedural aspects of Proposal 16, and accordingly is itself permissive.

The State proffers an alternative ground as to why Proposals 16 and 17 should be held permissive. It points out the term "job classification" has a discrete and limited meaning in labor law. It argues the second paragraph of Section 20.9, coupled with the authority of the Department of Personnel with respect to job classifications detailed in Section 19A.9(1), in essence render the subject of job classifications not a mandatory subject of bargaining for state employees. State Brief at 16-18.

PERB has given the topic of job classifications a narrow construction. See Bettendorf-Dubuque Community School Dist., 76 PERB 598 & 602 ("the term 'job classification' relates to the arrangement of jobs into categories, based on selective factors, for the primary purpose of establishing wage or salary rates.") Though narrowly defined, the topic is nonetheless mandatory within its proper scope under Section 20.9.

The second paragraph of Section 20.9 provides in pertinent part:

> Nothing in this section shall diminish the authority and power of the department of personnel . . . to . . . rate candidates in order of their relative scores for certification or appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

Section 19A.9 requires the personnel commission of the department to adopt rules to provide, with respect to job classifications

> [f]or the preparation, maintenance, and revision of a position classification plan from a schedule by separate department for each position and type of employment not otherwise provided for by law in state government for all positions in the executive branch . . . based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class, in the same geographical area.

The statute further provides a post-classification appeal process for employees.

In the Court's judgment neither the second paragraph of Section 20.9, nor Section 19A.9, singly or in combination, remove the subject of job classifications from Section 20.9 as a mandatory topic of bargaining for state employees. The second paragraph of 20.9, by its terms, merely protects against diminishing the department's authority to rate candidates for the purpose of classification. This is consistent with the exclusive right of public employers under Section 20.7 to "[h]ire, promote, demote, transfer, assign and retain public employees." The rating of specific candidates for classification purposes is distinct from the duty to bargain with respect to job classifications generally.

of the above-quoted portion of Proposal 11 has merit. The Department of Personnel is "the central agency responsible for state personnel management," including specifically "[e]mployment relations, including the negotiation and administration of collective bargaining agreements ... . as provided in Section 20." Section 19A.1(2)(g), Iowa Code. In the case of employees whose salaries are supported equally by two departments, Proposal 11 would require the department to negotiate a proposal that would have the employee's organizational unit for layoff purposes determined by labor/management negotiation at the local level. Though it may well be true, as PERB pointed out in argument, the department frequently delegates negotiation to local management it cannot, consistent with Section 19A.1, be compelled to do so on specific issues. Thus PERB's determination in this regard is affected by error of law. Section 17A.19(8)(e), Iowa Code. PERB's ruling with respect to Proposal 11 will be modified accordingly.

In view of the foregoing, the following Orders are entered pursuant to Section 17A.19(a), Iowa Code.

ORDERS

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Reissued Ruling on Negotiability Dispute filed June 21, 1991, by the Iowa Public Employment Relations Board is modified with respect to that portion of Proposal 16 referred to on pages 25 and 26 of said Ruling to provide that the first two paragraphs of part

or subparagraph "E" involve a mandatory topic of bargaining under Section 20.9, and further, with respect to that portion of Proposal 11 set forth on page 22 of said Ruling stating "For employees whose salaries are 50% supported by two Departments, the affected local Unions and local management shall agree upon which Department is the employee's organizational unit," is modified to provide said subject is not a mandatory subject of bargaining under Section 20.9, Iowa Code;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that except to the extent modified above, the Reissued Ruling on Negotiability Dispute of the Iowa Public Employment Relations Board is affirmed;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the costs of this action are taxed one-half each to the State of Iowa and AFSCME/Iowa Council 61.

IT IS SO ORDERED.
Entered 5/28/92.

Ross A. Walters, Judge of the
Fifth Judicial District of Iowa

Copies to:

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